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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2005

DOUGLAS JENSEN

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. WHETHER PROBABLE CAUSE TO ARREST, UNDER THE SO-CALLED "COLLECTIVE KNOWLEDGE DOCTRINE", CAN BE JUSTIFIED, AFTER THE FACT, ON THE BASIS OF "PRESUMED KNOWLEDGE" NOT COMMUNICATED TO THE ARRESTING OFFICER.

2. IS IT UNCONSTITUTIONAL FOR THE SENTENCING DISCRETION TO BE SOLELY IN THE HANDS OF THE EXECUTIVE?

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Mr. Douglas Jensen, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the Court of Appeals (App. A) is published: United States v. Jensen, 425 F.3d 698 (Ninth Cir. 2005). The opinions of the District Court is unreported. (ER 64-77)

JURISDICTION

The Judgment of the Ninth Circuit was entered on October 6, 2005. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case presents two separate issues involving different Articles and Amendments to the U.S. Constitution.

The first issue addresses the application of the "collective knowledge doctrine" as it has been applied to the probable cause requirement contained in the Fourth Amendment to the United States Constitution, reproduced at App. B.

The second issue implicates the separation of powers

doctrine and the delegation of power doctrine as governed by Art. I, II and III of the United States Constitution. Several sections of the United States Code, 21 U.S.C. §851, §841(a)(1), and §841(b)(1)(A) are also implicated.

STATEMENT OF THE CASE

This is an appeal from a criminal conviction entered in the United States Court for the District of Montana, Missoula Division. Mr. Jensen was convicted of the offense of possession of methamphetamine with intent to distribute in violation of 21 U.S.C. §841(a)(1). This case presents two issues for consideration by the Court.

First, is the question of whether probable cause to arrest, under the so-called "collective knowledge doctrine"[1], can be justified after the fact on the grounds that another officer, *not participating in a coordinated investigation, not at the scene of the arrest and not in communication with the arresting officers*, was at the time of the arrest in possession of the necessary underlying facts supporting the arrest. This Court has never defined what the limits of the "collective knowledge doctrine" are, or if there are any.

This lack of direction has resulted in substantial confusion in the lower courts attempting to define what

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[1] The "collective knowledge doctrine" has alternatively been labeled the "fellow officer rule" and "pooled knowledge principle" by the various lower courts.

information can be imputed between varying law enforcement officers, and when that information may be imputed from one officer to another.[2] Lower courts' attempts to reconcile their various holdings have been unsuccessful, resulting in disparate treatment of the issue among the circuits.

Secondly, was Mr. Jensen wrongfully sentenced to life imprisonment, in violation of the separation of powers doctrine and the delegation of power doctrine, since the Executive Branch determined the sentence .

A. FACTS OF THE SCENE AND THE ARREST

At approximately 8:30 on the morning of February 19, 2003, Sergeant Lonnie Cook, a police officer with the City of Whitefish, Montana, while monitoring the Flathead County dispatch frequency, heard an "attempt to locate" radio bulletin regarding a citizen report of a possible drunk driver speeding somewhere in the neighboring city of

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[2] Some of the cases specifically discussing the lower courts' struggles in reconciling this issue include: *Bailey v. Newland*, 263 F.3d 1022, 1031-32 (9th Cir. 2001); *U.S. v. Meade*, 110 F.3d 190, 194, n.4 (1st Cir. 1997); *U.S. v. Shareef*, 100 F.3d 1491, 1503-04 (10th Cir. 1996); *United States v. Newman*, 265 F. Supp.2d 1100, 1106-1108 (D. Arizona 2003); *U.S. v. Conner*, 948 F. Supp. 821, 840-43 (N.D. Iowa 1996).

Kalispell[3]. (ER 105, ln. 15-23; 106, ln. 6-18)[4] information conveyed via Flathead County Sheriff dispatch identified a black Ford Taurus station wagon, together with a plate number. (ER 108, ln. 1-5) Cook thought the reported vehicle might belong to Douglas Jensen.

Prior to January 2003, Cook had been with the Northwest Drug Task Force (NWDTF). (ER 103, ln. 18 -104, ln. 10) Cook testified Jensen was someone whom he had "received intelligence on while working at the Northwest Drug Task Force." (ER 108, ln. 8-10)

Cook confirmed through dispatch that the wanted vehicle belonged to Jensen, and drove to intercept Jensen . Cook initiated a stop of the black Taurus outside of the City of Whitefish, as Jensen turned onto the private drive toward his home. (ER 108, ln. 18-19)

Cook told Jensen that he had been stopped because an "attempt to locate" for "[r]eckless driving, possible DUI, the excessive speed going through the north end of Kalispell." (ER 113, ln. 9-16) Two Flathead County officers, Deputy Tykachk and Corporal Meredith, arrived shortly

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[3] The cities of Whitefish and Kalispell are located approximately 15 miles apart in Flathead County, Montana.

[4] Citations follow the abbreviations used in the court of appeals for the Excerpts of Record ("ER") filed with the Ninth Circuit Court of Appeals.

thereafter. (ER 114, ln. 4-13)

Cook told Meredith that he had "prior intelligence from the Northwest -- working on the Northwest Drug Task Force that Jensen may be involved in some other things." (ER 114, ln. 16-19) Cook never did explain (either at the scene, or while testifying) what this alleged "prior intelligence" was. Since Cook did not have jurisdiction to apprehend Jensen for the driving offense, Jensen was relinquished to the custody of the Flathead County Officers who did have jurisdiction so that they could "conduct their investigation". (ER 114, ln. 19-25; ER 131, ln. 17-18)

From the outset, Cook conceded duplicitous motives in his investigation of Jensen. (ER 119, ln. 1-7) Cook called NWDTF Officer Michael Meehan, who had replaced Cook at the NWDTF when Cook returned to the Whitefish City Police Department. (ER 146, ln. 6-8) Cook's reason for calling Meehan was to "pursue an additional investigation". (ER 119, ln. 5-6)

Cook testified that he told Meehan, "**I've got a traffic stop and it's with Mr. Jensen, do you have any ongoing investigations or are you looking at him for anything?**" Officer Meehan's only reply was reported as, "**Oh, I didn't know he was back from Mexico.**" (ER 116, ln. 1-4) **(emphasis added)** This is the sum and substance of all the evidence in the record of the content of any actual